In the High Court of Judicature at Madras

Dated: 01/12/2003

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The Hon'ble Mr. Justice R. Jayasimha Babu
and
The Hon'ble Mr. Justice S.R. Singharavelu

Tax Case No. 130 of 2000
and
Tax Case Nos., 179, and 184 to 186 of 2000

The Commissioner of Wealth-tax,
Tamilnadu IV,
Madras. ... Appellant in
all the T.Cs.

-Vs-

M/s. B.R. Theatres and
Industrial Concerns P. Ltd.
Madras. ... Respondent in
all the T.Cs.

Tax Case appeal under Section 27A of the Wealth Tax Act, 1957 against the order of the Incometax Appellate Tribunal, Madras "D" Bench, made in W.T.A. Nos: 510 to 514 (Mds)/96 dated 27.09.1999 for the assessment years 1984-85 to 1988-89.

!For appellant : Mr. T. Ravi Kumar,
Junior Standing counsel for
Incometax Department.

^For respondent : Mr. Philip George and
Mr. P. Senthil Kumar

:O R D E R

(Order of the Court was
delivered by R. Jayasimha Babu, J.)

The question referred is,
" Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that the immovable properties held as business assets cannot form part of the subject matter of wealth-tax?"
The assessment years are 1985-85 to 1988-89.

2. The assets referred to in the question are admittedly assets which fall within the scope of Section 40 (3) of the Finance Act 1983. The ground on which the assessee contend that the value of the assets should not be taken into account for determining the assessee's liability is that these assets are held by the assessee as stock-in-trade. The assets are land and buildings.

3. This Court in the case of Commissioner of Wealth Tax vs. Varadharaja Theatres Pvt. Ltd. [(2001) 250 I.T.R. 523] held that the exemption granted to cinema houses with effect from 1.4.1989 by the Finance Act 1988 while computing the wealth of the closely held companies, which are subject to wealth tax, was not retrospective and that it would take effect only from 1st April 1989. This Court in that case dissented from the view to the contrary that had been taken by the Karnataka High Court in the case of Commissioner of Wealth Tax vs. Prakashi Talkies Pvt. Ltd. (1993) 202 I.T.R. 121.

4. Subsequently, this Court in the case of CWT v. Vummidi Bangaru Chetty (P) Ltd. (2002) 254 I.T.R. 332, held that the value of filigree silver and silverware, held by the assessee therein as stock in trade were assessable to wealth tax for the assessment years 1984-85 to 19 88-89. More recently, this Court in the case of CWT v. Reliance Motor Company Ltd. reported in (2003) 260 I.T.R. 571, held that for the assessment year 1984-85 the value of the motor cars which form part of the stock in trade of the assessee was not exempt from wealth tax.

5. The view taken in all the aforementioned cases is that the amendment effected to Section 40 of the Finance Act, 1983 by the Finance Act of 1988 is only prospective and not retrospective.

6. Learned counsel for the assessee here, despite those decisions, sought to contend that the value of the stock in trade was not includible in the net wealth, by placing reliance on a decision of Rajasthan High Court in the case of CIT vs. Jodhan Real Estate Development Co. P. Ltd., (2003) 259 ITR 79. That judgment, inter alia, placed reliance on the decision of the Karnataka High Court, which has been dissented from by his Court in the case of Varadharaja Theatres.

7. With respect, we are unable to subscribe to the view taken in that case of Jodhan, wherein it was held that the value of the cinema house could not be included in thenet wealth of the assessee even prior to 0.04.1989, even though 'cinema house' was specifically included in the exempted class of building only after the amendment effected by the Finance Act, 1988.

8. The test to be applied for deciding as to whether a later amendment should be given retrospective effect, despite a legislative declaration specifying a prospective date as the date from which the amendment is to come into force, is as to whether without the aid of the subsequent amendment the unamended provision is capable of being so construed as to take within it's ambit the subsequent amendment.

9. Applying that test it is not possible for us to hold that stock in

trade which is not excluded from wealth-tax in Section 40 of the Finance Act, 1983, is nevertheless to be regarded as having been excluded. No part of that section is capable of being given such a construction.

10. The decision of the Supreme Court in the case of Allied Motors (P) Ltd., vs. CIT, reported in (1997) 224 ITR 677, on which also the assessee's counsel placed reliance does not support the view that in all cases of unintended hardship the later dment should be regarded as forming part of the originally enacted law. In that case the Court while considering Section 43B of the Act and the amendment effected thereto by the Finance Act, 1987, which inter alia inserted a new proviso as also an explanation held that as the explanation was given retrospective effect, the proviso was also required to be given that effect, in order to place a reasonable construction on the section as amended.

11. The Court in that case held that, "a proviso which is inserted to remedy the unintended consequence to make the provision workable, a proviso which supplies an obvious omission in the section to give the section a reasonable interpretation, requires to be treated as retrospective in operation, so that a reasonable interpretation can be given to the section as a whole".

12. The non exclusion of stock in trade from the ambit of levy of wealth tax cannot per se be regarded as an 'obvious omission', nor is giving it immunity from levy of wealth tax necessary for reasonably interpreting the unamended provision.

13. We do not therefore see any good reason to depart from the view taken by this Court in the earlier decision that the Finance Act, 19 88 which amended portions of Finance Act, 1983, and extended the exemption from wealth tax, inter alia, to the value of cinema house and the value of stock in trade, is not retrospective.
14. The question is answered in favour of the revenue and against the assessee.

Index : Yes
Website : Yes

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Copies to

1. The Assistant Registrar,
Income Tax Appellate Tribunal,

Rajaji Bhavan, III Floor,
Besant Nagar,
Madras □ 90.

2. The Secretary,
Central Board of Revenue,
New Delhi.

3. The Commissioner of Wealth Tax,
Tamilnadu IV,
Madras

4. The Commissioner of
Wealth Tax (Appeals VI),
Madras.

5. The Assistant Commissioner
of Wealth Tax,
Company Circle IV (1),
Madras.

6. The Deputy Commissioner of
Wealth Tax,
Range IV,
Madras.

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